

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B1

PLR-140021-10

Date:

December 29, 2010

LEGEND:

X =

ESOP =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

a =

b =

Dear :

This letter responds to a letter dated September 29, 2010, and subsequent correspondence submitted on behalf of X, requesting a ruling under § 1362(g) of the Internal Revenue Code.

X was incorporated on Date 1. Prior to Date 2, X was taxed as an S corporation. On Date 2, X converted its existing common stock into two classes of stock and X's shareholders sold a% of their stock to ESOP, X's employee stock ownership plan. X's

S corporation election terminated on Date 2 under § 1362(d) when X created a second class of stock. X's shareholders did not make an election under § 1042.

On Date 3, X converted its two classes of stock into one class of stock, common stock. Thus, on Date 3, X had one class of stock outstanding. On Date 4, X's shareholders sold additional shares of common stock to ESOP. Thus, on Date 5, ESOP owned b% of the outstanding X stock. X is requesting permission to reelect to be an S corporation effective Date 6, prior to the termination of the five-year waiting period imposed by § 1362(g).

Section 1362(g) provides that if a small business corporation has made an election under § 1362(a) and if such election has been terminated under § 1362(d), the corporation (and any successor corporation) is not eligible to make an election under § 1362(a) for any taxable year before its fifth taxable year which begins after its first taxable year for which the termination is effective, unless the Secretary consents to the election.

Section 1.1362-5(a) of the Income Tax Regulations provides that the corporation has the burden of establishing that under the relevant facts and circumstances, the Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of the termination tends to establish that consent should be granted. In the absence of this fact, consent ordinarily is denied unless the corporation shows that the event causing termination was not reasonably within the control of the corporation or shareholders having a substantial interest in the corporation and was not part of a plan on the part of the corporation or of such shareholders to terminate the election.

Based on the information submitted and the representations made, X is granted permission to elect to be an S corporation effective Date 6. This ruling is conditioned on the shareholders of X not making an election under § 1042 concerning the sale of their stock to the ESOP.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal income tax consequences of the facts of this case under any other provision of the Code including whether X was or is a small business corporation under § 1361(b). This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Barbara J. Campbell

Barbara J. Campbell
Senior Technical Reviewer
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes